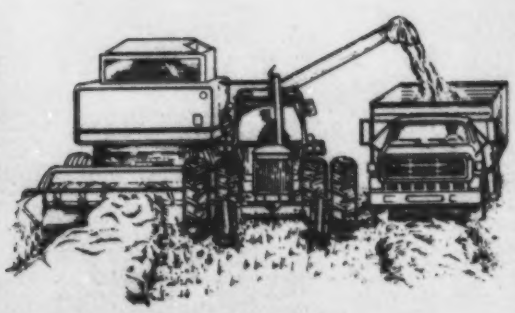
Saskatchewan Agriculture

Economics Branch

Farm Management



FARM CREDIT

LEGAL RIGHTS AND OBLIGATIONS

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Foreword

Credit is an integral part of most farm businesses. Farmers often pay little attention to the legal implications of credit arrangements when loans are paid on time and in full as agreed with the creditor.

A downturn in the farm economy has resulted in financial difficulty for many farmers, especially those with a heavy debt load. Now, many farmers are concerned with their legal rights and obligations with respect to credit.

The purpose of this publication is to indicate in general terms:

1. the types of credit available to farmers,
2. the methods available to creditors to handle farm loans in default,
3. the rights farmers have in dealing with creditors, and
4. the alternatives farmers have in dealing with financial difficulty.

At the end of the publication, there is a list of useful addresses and a glossary of common legal terms applicable to credit.

Caution: The publication is a general overview of the area of credit and the legal aspects of farm credit. It is not intended as a substitute for legal advice in dealing with specific problems. In such situations a lawyer should be contacted.

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1. Types of Credit Available to Farmers

A farmer who borrows money enters into a contract. It is an obligation to repay the amount borrowed according to the terms of the contract. The contract may specify the frequency and amount of each payment, the rate of interest, the security taken for the loan and numerous other obligations.

There are two main classes of credit. These are:

a) Secured credit, and
b) Unsecured credit.

1.1. Secured Credit

With secured credit, the creditor holds an asset of the borrower as collateral (eg. land, machinery, grain, etc). This means that if the borrower can not repay the loan, the creditor can sell the collateral in order to recover the amount loaned.

Types of secured credit are:

1. Land Mortgages
2. Hypothecation of Duplicate Certificate of Title
3. Agreements for Sale of Land
4. Chattel Mortgages
5. Conditional Sales Contracts and Lien Notes
6. Section 178 Bank Act Security
7. General Securities Agreements
8. Farm Corporation Debentures
9. Guarantees

For secured credit, it is necessary to distinguish between collateral given on real property (land and buildings permanently attached to land) and personal property given as collateral to secure to repayment of a loan (machinery, vehicles, livestock, grain, household furniture, etc.). Over time, the legal aspects of each type of security have developed separately.

1.1.1 Land Mortgages

A land mortgage is a legal document which gives an interest in land to a lending institution as security for a loan. The lending institution will cancel their interest in the land when the loan is repaid.

The lending institution will register a mortgage on the Certificate of Title to the land at the Land Titles Office. A mortgage which is registered first will have priority over a mortgage registered at a later date (e.g. a second mortgage).

The mortgage document will describe the property, the amount borrowed, the schedule of payments and the interest rate. Other terms may also be specified such as insurance requirements, a commitment not to destroy the property and or agreement to pay all taxes.

The right to prepay all or part of the mortgage will be indicated in the agreement. Some mortgages will not permit any prepayment, others will permit partial prepayment at specific times while others will permit full prepayment but subject to a penalty (usually three to six months interest).

Mortgages are regulated by laws passed by the Province of Saskatchewan. The action lenders may take for mortgages in default are strictly supervised by the Courts. Normally, a farmer in default on a mortgage is given time to catch up on past due payments. The legislation which affects mortgages are:

1. The Land Contracts (Actions) Act
2. The Farm Security Act
3. The Farm Land Security Act (1984)
4. The Limitation of Civil Rights Act
5. Farm Debt Review Act (1986)

These Acts are covered in more detail in section 3.

The major sources of farm mortgages are Chartered Banks, Credit Unions, Farm Credit Corporation and private individuals.

1.1.2 Hypothecation of Duplicate Certificate of Title

This procedure is similar to a land mortgage. However, with Hypothecation of Duplicate Certificate of Title, the farmer retains "legal" title to the land. The creditor only has the right to apply to the courts to have the land sold. In a land mortgage, the farmer transfers "legal" title to the creditor, but has the right to get the land back after the loan is repaid.

Hypothecation of Duplicate Certificate of Title is usually used when a small amount is borrowed. It is less costly to prepare than a land mortgage. It is often referred to as an "equitable mortgage".

Chartered Banks and Credit Unions are the major lending institutions in which Hypothecation of Duplicate Certificate of Title will be taken as security.

1.1.3. Agreements for Sale

Agreements of sale of farm land are most often used for private transactions including family farm transfers. The agreement for sale will describe the property, the price paid, the schedule of payments and the interest rate. Other terms are often included to protect the seller (vendor). The seller

will normally retain the title in his name as added security, until all payments are made. At that time title is transferred to the purchaser.

1.1.4. Chattel Mortgages

Chattel mortgages are similar to land mortgages except that the collateral is personal property rather than real property. Personal property includes such things as machinery, livestock, feed, grain, supplies, stocks, bonds, etc. The lender grants a loan on the security of the goods purchased with the loan or on goods already owned. Although the farmer may retain possession of the items given as security, his title is subject to the interest of the lender in the items and if he defaults in making his payments, the lender may take possession of the goods.

The legal aspects of chattel mortgages are determined by Saskatchewan's Personal Property Security Act. It permits lenders to take security on personal property but not any real property. Lenders register their interest in personal property by filing a financing statement with the Personal Property Registry in Regina. This statement indicates the secured party's interest in the personal property of the debtor.

By registering a security agreement, a creditor has established his priority in the settlement of claims against other creditors. The creditor has the right to repossess the borrower's personal property if he defaults in payments subject to following proper legal procedure. Registration also notifies potential purchasers that the property of the original owner is secured for a debt.

If a lender seizes property held as security under a chattel mortgage and the property is worth less than the outstanding loan, the lender can sue the borrower for any deficiency.

1.1.5. Conditional Sales Contracts

A conditional sales contract is a form of vendor credit. The vendor gives possession of the personal property (eg. tractor, television set) to the farmer. The farmer signs a contract to pay the purchase price but the vendor remains the legal owner until the amount is fully paid. The vendor can repossess the property if the farmer defaults in payments.

The vendor follows the same procedure for registering his security interest in the property as is followed for chattel mortgages.

A special form of conditional sales contract is used in the sale of farm implements and machinery to farmers from farm implement dealers.

The contract is a "lien note". Saskatchewan's Agricultural Implements Act prescribes the form that must be used. The farm machinery dealer registers his security interest under the Personal Property Security Act.

The vendor who repossesses property held as security under a conditional sales contract is limited to repossessing the property secured. The vendor can not sue for a deficiency where the value of the seized property is less than the outstanding loan.

1.1.6. Section 178 Bank Act Security

Chartered banks (not credit unions) are permitted by the federal Bank Act to lend money to farmers on the security of crops, farm machinery and equipment, livestock and farm electrical systems for purchasing the following:

a) seed grain
b) pesticides
c) livestock and feed
d) agricultural implements
e) repairs for farm machinery, alteration of farm electrical systems, erection of fencing, drainage and farm improvement to which the Farm Improvement Loan Act applies.

Section 178 Bank Act security transfers ownership of the property to the Bank while the farmer retains possession. The bank has the same rights of ownership and control as if it had title to the goods. The farmer can regain ownership of the goods when the loans are repaid. Should the farmer default under his obligations to the bank, the bank may repossess the goods.

The bank can repossess goods for the following reasons:

a) non payment of loans on which security was given
b) failure to care for or harvest crops held as security
c) failure to care for livestock held as security
d) failure to care for any property held as security
e) disposal of assets held as security without the bank's permission
f) seizure of any property

Banks have broad powers to repossess goods. Farmers have no right to obtain absolute ownership unless the loans are fully repaid.

Banks and a farmer can negotiate a line of credit, but the security taken by the bank is only valid after money is advanced to the farmer. Security can nct be used to secure previous advances, but the borrowed money can be used to pay past

indebtedness to the bank. It is not necessary to negotiate new security agreements each time funds are advanced to the farm. In essence, banks have revolving security in the types of goods described in the security agreement which pass through the farmer's business for the time that the loan is granted.

Banks do not have to register their security interest under the provincial Personal Property Security Registry. Banks register their interest by filing a Notice of Intention to Take Security under the Bank Act at the Bank of Canada in Regina.

1.1.7. General Security Agreements

A General Security Agreement is a mortgage of all the assets (except real property) of a farmer. It is an all encompassing agreement which applies to all present and future assets.

General Security Agreements are not commonly used by banks and credit unions to lend money to farmers because the Limitation of Civil Rights Act limits the speed with which a lender may take possession of farm machinery.

General Security Agreements are popular methods of lending to farm corporations since a corporation can waive the protection afforded by the Limitation of Civil Rights Act. When a farm corporation is in default on a loan, the lender may appoint a Receiver to handle the affairs of the farm corporation and sell its assets.

1.1.8. Farm Corporation Debentures

Banks and credit unions often use a debenture as security for loans to corporations. Any document which creates or acknowledges a debt is defined as a debenture. Loans may be on demand or for a set term.

Security can be in the form of fixed charges (mortgages on land) or floating charges on other assets of a corporation. A floating charge does not affect any individual item unless default on the loan occurs. At that time the lender can seize and sell the assets or appoint a Receiver to wind down the business and arrange for an orderly sale of the assets. The Receiver's power is determined by the terms contained in the debenture. Corporations that provide debentures as security should fully understand the terms of the agreement.

1.1.9. Guarantees

A person who guarantees another person's loan with a lender is called a guarantor. The guarantor is responsible to repay the debtor's loan if he cannot meet the payments. Often principal shareholders will act as guarantors for a farm corporation's loans or a parent may guarantee a child's loan.

Guarantees can be for a single or a continuing series of loans. Since the guarantor has no control over a debtor's business dealing, he should be very careful of signing a guarantee for more than one loan.

If a guarantor is obligated to repay a debtor's loan, he can realize on the security that was initially given by the debtor to the lender.

1.2. Unsecured Credit

When credit is granted and no security is taken, it is referred to as unsecured credit. Common forms of unsecured credit are:

a) Trade Credit
b) Unsecured Bank Loans

1.2.1. Trade Credit

Trade credit includes such things as charging a fuel purchase to a charge account with a bulk fuel dealer and charging feed purchases at a feed mill. It is essentially a short term loan, usually 30 days and no interest is normally charged. However, interest at a very high rate is usually charged after the 30 day period. The vendor who has extended such credit has no security interest in the goods purchased and can not seize the goods if the account is not paid.

1.2.2. Unsecured Bank Loans

This often takes the form of overdraft protection. Bank customers may be allowed to write cheques even though there are insufficient funds in the account providing the overdrafts are not excessive. Interest rates can be quite high on overdraft amounts. However, it is essentially an unsecured loan.

1.2.3. Credit Cards

Charges to a credit card are another form of unsecured credit. An interest free period is normally permitted to pay the account after which a relatively high interest rate is charged.

1.2.4. Promissory Notes

Many small personal and farm loans are given with security in the form of a promissory note.

A promissory note is a written promise to pay the amount borrowed with or without interest according to some payment schedule.

2. Collecting Loans In Default

When a farm borrower does not repay his loans or defaults on some other term in the contract, lenders are able to take certain action (subject to government legislation) to collect the debts. The procedures that are followed depend on who the lender is, the type of security that was taken, if any, and the legislation applicable to the situation.

Secured creditors can exercise their rights as contained in their security agreement plus the procedures available to unsecured creditors. Secured creditors will use the approach of an unsecured creditor if the secured property has a value less than the outstanding loan since the deficiency is really an unsecured loan.

2.1 Unsecured Trade Credit

Unsecured creditors can not seize the goods for which funds were lent. Normally the first step is for the creditor to send a letter to the farmer asking for payment. Following this, a collection agency or a lawyer may be hired to collect the debt. Finally, the lender or his agent will take legal action.

2.1.1. Court Judgments

When all the procedures to collect a debt have been exhausted, the creditor can apply to a Court for Judgment against the debtor. The debtor can defend himself in Court. If the debtor does not present a defense, or if he does but the judge rules in the favour of the creditor, a Judgment is granted to the creditor. A Judgment acknowledges the debt owed by the debtor and permits the creditor to take action to recover the amount owed in the more effective manner.

A judgment can be enforced by garnisheeing wages, bank accounts, rents, etc. or by a Writ of Execution whereby certain assets can be seized and sold or by an application to sell land.

A creditor can file for a Judgment in Small Claims Court if the debt is $3000 or less and in Queen's Bench Court if the amount is over $3000.

2.1.2. Enforcing a Judgment

Creditors must follow the procedures provided for under the federal Farm Debt Review Act before a Judgement can be enforced. This is discussed in more detail in Section 3.

a) Garnishee

The creditor can enforce the Judgment by garnisheeing (claiming) amounts owed to the debtor. This includes such things as bank accounts, wages, rents, etc.

Limits are placed on the amounts that can be garnisheed from wages. The debtor is entitled to keep the first $550 of monthly wages plus $100 for each dependant. In addition, claims against wages for maintenance of spouse or children, hospital bills, and board and lodging have priority over a garnishee.

b) Writ of Execution

A Court can grant a Writ of Execution which authorizes the creditor to seize assets of the debtor to satisfy the Judgment. Only assets not pledged as security can be seized and sold. After property is seized by the Sheriff, it can be sold at public auction. However, strict procedures must be followed.

Grain can be seized but charges for harvesting must first be settled.

c) Application for the Sale of Land

Land not held for security may be seized and sold to settle a Judgment claim. This is a long and complicated procedure and is used as a last resort to collect a debt. The provisions of the Farm Land Security Act apply to this process.

d) Property Exempt from Seizure

Certain property is exempt from seizure. This is set out in provincial legislation called the Exemptions Act. The exempt items are:

1. The debtor and his family's clothing.
2. Household furniture and appliances to a value $4500.
3. Sufficient food for the family and fuel for heating a house to last until the next harvest.
4. Animals, harness, farm machinery and equipment, dairy utensils, one car and one truck that are required to operate the farm for 12 months.
5. One motor vehicle to carry on a trade, business or profession. This is not in addition to the exemption provided in clause 4.
6. The books of a professional person.
7. Tools, implements and office furniture to a value of $4500 required in a business trade, calling or profession.
8. Sufficient seed grain to seed all the land at the rate of two bushels per acre plus 14 bushels of potatoes for seed.

9. Crop with a value sufficient to pay crop harvesting costs, provide living costs for the family and cover the farming costs until the next crop is harvested.
10. The homestead, not exceeding 160 acres.
11. The house and building plus the lot on which they are located to a value of $32,000.
12. A trailer or portable shack used a living quarters. This is not an exemption in addition to clause 11.

2.2. Secured Credit

The balance of this section indicates the procedures for collecting loans that are secured.

Creditors must follow the procedures provided for under the federal Farm Debt Review Act prior to realizing on security. This is discussed in more detail in Section 3.

2.2.1. Chattel Mortgage and Condition Sales Contracts - Farm Machinery and Personal Property

Repossession procedures are determined by the Personal Property Security Act and Limitation of Civil Rights Act.

The creditor is legally the owner of property under a Chattel Mortgage or Conditional Sales Contract. The creditor can instruct a bailiff to seize the secured property when the debtor defaults in his obligations.

The Limitation of Civil Rights Act makes exceptions for certain articles and provides a different method of carrying out their seizure. The articles subject to these rules are:

a) implements subject to the Agricultural Implements Act. This covers most implements used on farms with an initial cost over $1000 except highway vehicles and consumer products.
b) a farm truck registered under the Vehicles Act
c) a cream separator
d) a stove
e) a heater
f) a sewing machine
g) a refrigerator or a freezer
h) a snowmobile if used on the farm

To repossess articles covered by the Limitation of Civil Rights Act, the creditor must first serve two copies of a Notice of Intent to Take Possession to the farmer in default. A form is attached which permits the farmer to request a hearing before a Queen's Bench Judge before seizure can take place. The request must be filed by the farmer within 30 days at the judicial centre closes to where he resides.

If the farmer does not file a request for a hearing, then the creditor may repossess the secured property. If the farmer does request a Court hearing, a hearing takes place where both the creditor and debtor can make submissions. The judge will decide if repossession should be permitted or adjourn proceedings and allow time to pay the debt. The decision may be based on the following factors:

a) the amount of the farmer's equity in the article
b) how necessary the implement is to the farmer's operation
c) the farmer's attempt to pay off the balance owing or refinance the loan.

In situations where a farmer has not requested a hearing, but the creditor has not yet repossessed the articles, the farmer can request a hearing date at any time up to the date of seizure. If the Judge determines that the farmer is making a genuine attempt to refinance, and has equity in the machine or requires the machine for his farm operation, he may delay this creditor's right to immediate repossession.

After the articles are seized, the farmer is served with a Form which informs him that he has a right to request a hearing before a Judge. This right to a hearing applies until the property is sold. A creditor can not sell the article until 30 days have passed after the Form is served on the farmer.

Creditors must be very careful to follow the rules specifically. If an error is made in the procedure the following occurs:

a) the agreement is ended
b) the farmer no longer is liable for payment of the debt
c) the farmer may recover all amounts paid to the creditor

Individual farmers are automatically covered by the Limitations of Civil Rights Act. They can not agree with a creditor not to have the provisions of this Act to apply when negotiating for a loan. However, corporations including farm corporations can give up their rights under this Act. Farm corporations should carefully read security agreements before signing to see if they are waiving their rights under the Limitation of Civil Rights Act.

2.2.2. Collateral Under the Personal Property Security Act

This applies to a security agreement not affected by the Limitation of Civil Rights Act or to a

farming corporation that has waived its rights under the Limitation of Civil Rights Act.

The security agreement negotiated between the creditor and debtor at the time the loan is made spells out repossession rights of the creditor.

The secured creditor may direct a bailiff to seize the property in any manner allowed by law. The creditor can also sue for any balance due.

After seizure, the property may be sold by public or private sale. However, the debtor must be served with a proper notice at least 20 days prior to sale. The Personal Property Security Act indicates what must be contained in the notice.

Any surplus of funds remaining after the sale must be paid to the farmer.

2.2.3. Cattle and Grain Under Security Agreements

The procedures to repossess cattle and grain are similar to the procedure indicated in the previous section. Twenty days notice must be served and it must be the type of notice provided for in the Act.

However, in the case of cattle, the creditor must hold the cattle for 20 days after seizure. The cattle must be fed and properly cared for. The cost of feed and care can be deducted from the sale price or charged to the farmer if he redeems the cattle.

Some types of grain such as barley or oats may be sold on the open market. Wheat must be sold to the Canadian Wheat Board. This requires the co-operation of the farmer in the use of his permit book.

2.2.4. Repossession of Section 178 Bank Act Security

The Bank Act is a federal law. It has always been assumed that the provisions of Section 178 of the Bank Act take precedence over provincial legislation.

Chartered Banks may repossess a farmer's property held as security if he is in default on a loan (eg. non-payment of loans, lack of care of the security, sale of security without lenders permission, seizure by other creditors). A bank may enter a farm and harvest crops or care for and feed livestock. Further a bank has the authority to appoint a Receiver to manage the farm on an interim basis and eventually sell the secured assets.

The law is not clear if the provisions of the Saskatchewan's Limitations of Civil Rights Act applies to Banks which repossess farm machinery. A recent Saskatchewan Court of Appeal ruling suggests that Banks are subject to provincial law, especially the Limitations of Civil Rights Act. This has been appealed to the Supreme Court of Canada. To be sure, banks often follow the provisions of the Limitations of Civil Rights Act.

Normally banks authorize a bailiff to serve a notice on the farmer which demands immediate payment of loan arrears. If the loans are not paid immediately, the bank will seize the secured assets.

Farmers are given 10 days notice prior to public sale of seized property except for livestock. Livestock may be sold two days after the sale is advertized in two local newspapers.

No property is exempt from seizures as indicated in the Exemptions Act. However, some Banks may allow farmers to retain property that is exempt under the Act as a manner of policy and good will.

2.2.5. Procedure if Secured Property is Sold by a Debtor

If a debtor sells secured property, the creditor has a right to the proceeds of the sale whether it be in the form of cheques, cash, money on deposit etc. This includes transfers to another person's account.

2.2.6. Sale of Property to a Relative or Selected Creditors

Sale or transfer of property to a relative or selected creditor can be declared void when it can be proven that the sale was made to defraud a creditor.

2.2.7. Repossession of Mobile Homes

The Distress Act indicates the procedure a creditor must follow to repossess a mobile home. The creditor must give 30 days notice in writing to the owner prior to seizing it. The notice must contain specific information provided for in the Act. The notice gives the owner the right to pay the loan. The owner is subject to a $500.00 fine if the mobile home is removed from the property after notice is given.

A Sheriff (not a bailiff) is required to seize a mobile home. The Sheriff must be satisfied that proper notice was given to the owner. After seizure the owner must be given the same notices for sale as is given to debtors subject to the provisions of the Personal Property Security Act (see section 2.2.2).

2.2.8. Appointment of Receivers

A security agreement on Personal Property may authorize a creditor to appoint a Receiver to take over all the property covered by the security agreement when a debtor defaults. Because of the restrictive provisions for repossessing farm machinery under the Limitation of Civil Rights Act, creditors do not often appoint Receivers where most of the security is a farmer's farm machinery. It is more common where there is livestock or other security not affected by the Limitation of Civil Rights Act. A receiver may be appointed to dispose of a corporation's farm machinery where the rights under the Limitation of Civil Rights Act were waived.

The law regarding Receivers is very complicated. Farmers facing such situations should obtain immediate legal advice.

3. Farmers' Rights Under Government Legislation

The Province of Saskatchewan has over the years enacted legislation to protect people unable to meet their debt obligations. Further the federal government in 1986 enacted the Farm Debt Review Act.

Both secured and unsecured creditors are limited by legislation in methods to collect debts. Some legislation applies to all persons in Saskatchewan while some legislation applies only to farmers.

The Government Acts covered in the section are:

1. Federal Farm Debt Review Act.
2. The Limitation of Civil Rights Act
3. The Farm Security Act
4. The Land Contracts Action Act
5. The Queen's Bench Court
6. The Exemptions Act
7. The Provincial Mediation Board Act
8. The Farm Land Security Act
9. Counselling and Assistance For Farmers' Program

3.1 Farm Debt Review Act

The Farm Debt Review Act came into effect on August 5, 1986. The purpose of the Act is to encourage a process of mediation between insolvent farmers or those in financial difficulty with their creditors.

Secured creditors and creditors that have obtained judgments must give a farmer 15 business days notice prior to taking action to realize on security. This notice must also be filed with the Farm Debt Review Board. Specific procedures must be adhered to.

A farmer upon receipt of this notice is given the right to apply for a review of his situation by the Farm Debt Review Board. If he does not apply within the 15 business day period, the creditor is free to proceed to realize on security subject of course, to the provisions provided for by other legislation. If a farmer applies for a review then the review process is commenced by the Board.

Once an application is received from a farmer, the Board invokes a stay of proceedings by creditors for an initial 30 day period. This means that the creditors are not allowed to proceed to realize on their security. The stay of proceedings may be extended in 30 day intervals for a total period of 120 days. Creditors are notified of the stay of proceedings.

A guardian is appointed to oversee the farmer's assets. Normally the farmer is appointed as the guardian.

In the review process, the Farm Debt Review Board assigns field staff to meet individually with the farm operator, his creditors and other interested parties to prepare an in-depth report of the farm situation. Alternative courses of action are identitifed.

A three member panel is appointed by the Board to study the report and meet with the farmer and his creditors to seek an arrangement which is mutually satisfactory. An attempt is made to allow the farm business to continue. If agreement is reached, a legal contract is prepared.

If agreement can not be reached and, at the end of the stay of proceedings, the creditor can commence action to realize on the security subject to applicable legislation.

Farmers in financial difficulty (but not insolvent) who are not being foreclosed on by creditors, can also request a review by the Farm Debt Review Board. The procedures are the same as for an insolvent farmer except that there is no stay of proceedings.

Farmers are permitted only one application for a review by the Farm Debt Review Board every two years unless written permission is obtained from the Board.

3.2 The Limitation of Civil Rights Act

This Act applies to land mortgages, land leases, agreement for sale of land, chattel mortgages and conditional sales contracts.

3.2.1 Land Mortgages, Land Leases and Agreements for Sale

Mortgages and agreements for sale of land contain a personal covenant. If a farmer defaults on his loan, the agreement will state that the creditor can:

a) enforce the farmers personal covenant to pay the debt, and
b) take action to regain possession and ownership of the land

A creditor according to the mortgage or agreement for sale could sue the farmer on his personal covenant if the proceeds from the sale of land was less than the debt. However, the Limitation of Civil Rights Act intervenes and provides as follows:

a) Agreements for Sale. The creditor is limited to cancelling the agreement for sale and taking back the land. He can not sue the debtor for any deficiency if the property is worth less than the outstanding debt and arrears interest.

b) Mortgages

i) Where the creditor was also the owner (vendor) of the land before the sale to the farmer, the creditor (vendor) is restricted to taking back the land. He can not sue the farmer on his personal covenant for any deficiency.
ii) Where the creditor (e.g. bank or credit union) provides funds that the farmer in turn uses to purchase land from another party, then the creditor may be able to sue the farmer on his personal covenant if the proceeds from the land are less than the debt. If the land is transferred back to the creditor, then the creditor can not sue the farmer on his personal covenant except for a very brief time period before the transfer. However, if the land is disposed of by Judicial Sale, and the proceeds are less than the debt, the creditor can sue the farmer on his personal covenant for the deficiency. The creditor could be further restricted from suing the farmer on his personal covenant to the extent that the Exemption Act exempts certain property from seizure. (See Section 2.1.2 (d) Property Exempt from Seizure.)

Since corporations can waive their rights under the Limitation of Civil Rights Act, then the creditor may be able to recover the balance of the debt not covered by the value of the land.

3.2.2. Chattel Mortgages

When a farmer makes a loan payment where several loans exist, the creditor must immediately apply the payment to one or more of the loans and inform the farmer of how the funds were applied.

Chattel mortgages may not contain any provision which gives the creditor any rights based solely on his opinion.

A creditor holding a chattel mortgage for security may sue the debtor for the balance of the debt if the property is sold for less than the debt.

3.2.3. Conditional Sales Contracts

Creditors holding a conditional sales contract or lien note for farm machinery are limited to repossessing the property to settle the debt. If the value of the property is less than the debt, the creditor assumes the loss.

Certain sales are exempt from the provision. These are:
a) sale of land with chattels included in the sale
b) an agreement for sale of livestock
c) sale of goods in bulk (eg. fertilizer)
d) property which is attached to real property

A creditor could also take further action if the debtor wilfully destroyed or damaged property.

3.3. The Farm Security Act

The Farm Security Act and the Farm Land Security Act are different Acts. The Farm Security Act is an old Act which provides protection to farmers who experience crop failure and have a crop share lease or agreement for sale.

The Farm Security Act also provides protection to the homestead in the case of foreclosure. The homestead is defined as the farm residence, the quarter section on which the residence is located and the other buildings. The farmer must live on the homestead. Creditors may not foreclose on the homestead if a mortgage was granted on the homestead but the funds were used to acquire other property. If funds were used to acquire the homestead, foreclosure is not prevented by the Act. Farm Credit Corporation mortgages are also not affected by this Act. Farmers can sign away their rights under this Act by applying to the Provincial Mediation Board.

3.4. The Land Contracts (Actions) Act

The Land Contracts (Actions) Act indicates the procedure creditors must follow to foreclose on land or cancel an agreement for sale. Note that this Act does not apply while the provisions of the new Farm Land Security Act apply. This is from December 4, 1984 to December 31, 1988.

The first step a creditor must take to commence foreclosure is to serve a Notice to the Provincial Mediation Board. The information that must be contained in the Notice is specified in the Act.

The Provincial Mediation Board then contacts the debtor farmer and attempts to mediate the foreclosure action. If mediation is not successful within 30 days, the creditor can apply to a Court to commence foreclosure. Once the Court authorizes the Creditor to proceed, the creditor and debtor must appear before the Court to explain the reasons for non-payment of the debt and to determine if the debtor has a possibility of bringing payments up to date. At this stage the Judge could adjourn the proceedings for up to eight months if it was apparent that the farmer may have a chance of bringing his payments up to date.

After the adjournment, if the farmer has not been able to pay out the mortgage, the creditor may proceed to foreclose. The procedure from this point on is exactly the same as if the action was commenced under the Farm Land Security Act (see Section 3.8 for detail).

3.5. Queen's Bench Act

a) Mortgages and Agreements for Sale

When a farmer fails to make a mortgage or agreement for sale payment on time, the creditor may call for full payment of the loan and commence foreclosure action. The Court will disallow foreclosure if the farmer brings the payment in arrears up to date.

Most mortgages today are of a shorter term of one to five years. The protection offered by the Queen's Bench Act are largely ineffective.

b) Judgments and Writs of Execution

A debtor who has had a Judgment issued against him, may apply to a Queen's Bench Judge for direction of how the amount recovered under the Judgment is to be applied. The Judge can also decide what may be done to enforce the Judgment.

A debtor can not simply use this provision to prevent a creditor from enforcing a Judgment.

3.6. Exemptions Act

The Exemptions Act provides that certain real and personal property of a debtor are exempt from seizure by virtue of Writs of Execution. The exempt items were listed in section 2.1. (Unsecured Credit).

Note that if the judgment is for the purchase price of an otherwise exempt article in the list, then the Exemption Act does not apply.

3.7. The Provincial Mediation Board Act

The Provincial Mediation Board is appointed under the Act. This Board can provide assistance to all debtors including farmers. A debtor farmer may apply to the Board to mediate with his creditors and work out a payment schedule. If all parties agree to new terms it effectively modifies the original security agreements.

The Board's other powers include:

a) grant permission for a creditor to foreclose on land
b) mediate where a farmer has not paid his property taxes to a municipality and he is going to lose his land.
c) prevent cancellation of a lease by a landlord.

From a practical point, the Provincial Mediation Board seldom gets involved in mediation involving farmers and their creditors.

Farmers who wish to use a mediation process should contact the Counselling and Assistance For Farmers Program (see section 3.8)

3.8. Farm Land Security Act

This provincial Act changes the steps involved in foreclosure actions on farm land from December 4, 1984 until December 31, 1988. While this Act remains in force, the provisions of the Land Contract (Actions) Act do not apply (see Section 3.3). The Act applies only to farm land and does not affect assets such as machinery, livestock and inventories.

The Farm Land Security Act applies only to farm land mortgages held by chartered banks, credit unions, trust companies, Farm Credit Corporation, Agricultural Credit Corporation of Saskatchewan and mortgages held by individuals. Agreements for sale and land subject to sale through writs of execution are also covered by the Act.

Under the Act specific procedures must be followed by a lender in order to commence foreclosure action. The Farm Land Security Board reviews all applications by lenders to foreclose on

farm land. The lender must serve at least 120 days notice to the farmer and the Board prior to applying to court to obtain permission to foreclose.

The Board is required to:

a) investigate the farmer's financial affairs
b) attempt to mediate between the farmer and lender
c) provide a written report to the Court including its opinion of whether the farmer:
   i) has a reasonable possibility of meeting his obligation under the mortgage, and
   ii) whether the farmer is making a sincere and reasonable effort to meet his obligation under the mortgage.

Financial fieldmen are hired by the Board to investigate the financial affairs of the farmer. The fieldmen contact both the farmer and creditor and prepare financial statements for the farm.

A copy of the Farm Land Security Board report is given to the Court, the farmer and the creditor.

The farmer can point out to the Board any points in the report which he disagrees with.

Both the creditor and the farmer can present evidence at the Court hearing. To be successful, the creditors must prove that the farmer is not making a reasonable effort, or has no possiblity of meeting his obligations under the mortgage. The court will rely on the evidence presented by the farmer and the creditor as well as the report of the Farm Land Security Board.

The Court will allow foreclosure to proceed only if the creditor can prove either of the two points listed above. However, the Court does have the power to disallow foreclosure if it feels it would not be consistent with the intent of the Farm Land Security Act.

3.9. Counselling and Assistance For Farmers' Program

This program provides counselling assistance and guarantees on operating loans to farmers with financial difficulty. A Farmer Review Panel is established to develop financial plans for farmers that apply for assistance. Farmers that meet certain eligibility criteria can qualify. Information on the program is available from lenders or the Program Chairman in Regina.

4. Collection Agencies and Credit Reporting Agencies

4.1 Collection Agencies

After a creditor has attempted to collect on past due debt, he will usually contact a lawyer or collection agency for collection. Collection Agencies are subject to certain rules laid down by the province. However, lawyers, finance company employees, bank officers, rental agents and persons who collect for themselves are not subject to these rules.

A collection agent will usually charge a percentage of the debt (eg. 20 - 50%) to collect. Techniques used to collect include notices, phone calls, personal visits and finally Court action.

A collection agent is prohibited from:

a) collecting more than the debt amount
b) charging the debtor a fee
c) using collect telephone calls or telegrams
d) making too frequent phone calls which constitutes harassment
e) phone calls may not be made on Sundays, holidays or other than between 8:00 am and 9:00 p.m.
f) giving other persons false information about the debts
g) giving or threatening to give information to the debtors employer or family member.

Collection agents must file copies of their forms of notice, letters or agreement with the Saskatchewan Department of Consumer and Commercial Relations. If a debtor has difficulty with a Collection Agent, he can contact the department for assistance.

4.2 Credit Reporting Agencies

Credit Reporting Agencies are regulated and licensed by the province. Only certain information can be contained in a credit report. This is set out in the Credit Reporting Agencies Act.

Credit Reporting Agencies may release information to the following persons only:

a) persons deciding on a consumer's application for credit, employment, tenancy or legitimate business purposes
b) An assignee of an agreement for credit, insurance or tenancy,
c) federal, provincial or municipal governments or agencies or police officers
d) the person who is the subject of the report.

Individuals may obtain a credit report about themselves. If he disagrees with some information in the report he can serve a notice to the agency and require it to investigate the problem. The agency must note the disagreement in the report or correct the invalid information if it is so found to be.

5. Bankruptcy

Bankruptcy is normally considered the last alternative to settling farm financial difficulties. Bankruptcy procedures are governed by the federal Bankruptcy Act. The purpose of the Bankruptcy Act is:

a) control the distribution and division of an insolvent debtor's assets
b) punish fraudulent debtors
c) allow insolvent debtors to get out from under a crippling debt load
d) promote confidence in the credit system

An insolvent person is defined as one who owes creditors more than $1000.00 can not meet his financial obligation as they come due or ceases to pay his current obligations or has more debts than the value of his assets.

Bankruptcy should only be considered where unsecured debts are high and/or the amount of secured debts exceed the value of the security and the debtor must make up for the deficiency.

The threat of bankruptcy is a strong bargaining tool when a farmer deals with a creditor for refinancing or debt write down. Creditors often prefer to deal with a farmer on a one to one basis and avoid the delays and difficulties in dealing with a Trustee in Bankruptcy.

Other considerations in declaring bankruptcy included:

a) the number of creditors
b) garnishees, harassment by creditors or frequent Court appearances concerning his debts
c) off farm wages that can be claimed to settle debt
d) ability to support the family
e) the legal and Trustee fees to complete bankruptcy

Farmers can use the Bankruptcy Act in one of three ways. These are:

a) voluntary declaration of bankruptcy
b) be petitioned (forced) into bankruptcy by creditors (applies only to farm corporations and not individual farmers)
c) voluntarily filing a proposal

5.1 Procedures

The ownership of a farmer's assets are transferred to a trustee in Bankruptcy after he files for bankruptcy or a proposal is turned down. Certain assets are exempt from seizure. These are listed under Saskatchewan's Exemptions Act (see section 2.1 Unsecured Credit). As previously stated, property listed in the Exemption Act are not exempt if they have previously been given as security to a lender. In other words, secured creditors could take action to recover their interest in this property.

The Trustee in Bankruptcy calls a meeting of creditors to determine how bankruptcy shall proceed. Each creditor is given votes based on the amount of debt owed to decide how bankruptcy shall proceed. Creditors may appoint inspectors (up to 5) to see that the bankruptcy affairs are properly handled by the trustee.

The Trustee will collect all the bankrupts assets. This will include the bankrupt's share of property held in joint name. Sale of assets can be by private contract, public auction to tender.

5.2 Priority of Creditors

Secured creditors are able to recover the value of the security they hold. If the security is worth less than the debt, they may have a claim for the balance in the same manner as any other unsecured creditor. If the security is worth more than the debt, the Trustee in Bankruptcy may use the balance to satisfy other claims.

The Bankruptcy Act indicates how the assets are to be distributed. This is as follows:

a) funeral and testimony expenses of a deceased bankruptcy
b) Trustee fees and costs of administration
c) Fees payable to the Superintendant of Bankruptcy
d) wages, commissions, salaries, or compensation paid to the bankrupt's employees for the past three months to a limit of $500.00
e) municipal taxes
f) rent in arrears for up to three months
g) amounts owing to Worker's Compensation, Unemployment Insurance and Income Tax
h) claims by injured employees
i) claims by governments

The balance of the assets are then distributed to the unsecured creditors pro rata.

5.3. Discharge from Bankruptcy

After the unsecured creditors are paid out, the Trustee will apply to the Court for an order to discharge the bankrupt. This will normally be three months to one year after bankruptcy is declared. The Court will normally grant the discharge except in unusual circumstances such as negligence or recklessness in handling the property and business prior to the bankruptcy or some other element of wrongful behavior.

The discharge gives the bankrupt a clear slate and cancels most outstanding debts. However, certain obligations must still be met such as alimony, maintenance payments, fines or debts for necessary personal items purchased.

5.4. Proposals under the Bankruptcy Act

Farm corporations and individual farmers who are insolvent can make a proposal under the Bankruptcy Act to pay off creditors under the supervision of a Trustee. A Proposal must be accepted by all the creditors otherwise it will not proceed. If the Proposal is turned down by the creditors, it is deemed that the bankrupt has made a voluntary assignment into bankruptcy.

A proposal accepted by the creditors must be approved by the Court. A Court will not approve a proposal unless at least 50% of each creditor's claim is paid. After approval of the Proposal, if the debtors should break any of the terms agreed to, it will be deemed that the debtor has made a voluntary assignment into bankruptcy.

5.5. Orderly Payment of Debts

Only individuals may use the Orderly Payment of Debts provisions contained in the Bankruptcy Act. Insolvent persons may make a monthly payment to the Provincial Mediation Board for distribution to his creditors. Debt counselling and budgeting assistance are also provided.

As a matter of policy, the Provincial Mediation Board does not assist farmers regarding the Orderly Payment of Debt provisions.

6. Facing Financial Difficulties

Financial problems do not necessarily mean disaster as long as quick action is taken. Financial problems just do not disappear. The time to deal with problems is when it is apparent that all the loan payments can not be made. Once lenders commence legal proceedings against a farmer it is often too late to solve the problems.

6.1 Indications of Financial Difficulties

Often farmers do not recognize that they have financial difficulty until it is too late. Some warning signs include the following:

- operating loans remaining at the upper limit
- operating loans not revolving
- loan arrears beginning to appear
- trade credit being used beyond 30 days
- cash operating losses for several years
- production below projections and expectations
- ongoing cash flow problems

6.2 Avoiding Financial Difficulty

Financial difficulty can be due to external factors, such as bad weather, illness, etc. It can be due to poor management too. However, several measures can be taken that will lessen the chances of financial problems arising and providing a means of coping with them if they do. These are:

a) Keep good records.
b) Prepare financial statement before making a major change in the farm or borrowing more money. This will ensure that the loan can be paid back.
c) Before trouble begins, consult professionals for advise. Accountants, lawyers, bank managers, farm management specialists and consulting agrologists can be of assistance.
d) Do an annual review and analysis of the farm business to determine where the strong and weak points are and take appropriate action to correct the weak points.
e) Consider carrying disability insurance in case sickness or an accident prevent you from carrying on the farm operation.
f) Carry insurance on the farm property (eg. Crop Insurance, buildings and machinery insurance) to protect yourself from large potential losses.

6.3 Solutions for Financial Problems

The following are possible solutions to financial problems. When problems arise inform and work with your creditors immediately. Delays only make the problems worse and may make it more difficult to work with the creditors on a credible basis.

If you receive legal documents or a letter from a lawyer, seek your own legal advise immediately. It may be possible to forestall further legal action and may save costs.

6.3.1. Management Decisions

A farmer should carefully analyze the farming operation. Sometimes financial problems can be solved by restructuring debts, improving management, increasing productivity and cost cutting. If costs are cut, ensure that it does not reduce production and result in a reduction of net income.

6.3.2. Arrangements with Creditors

Often if difficulties are due to external factors, such as illness, bad crops, etc., creditors will be willing to extend the time for payment. However, one should be realistic in expectations of ability to pay even when the payments are extended.

Some of the options available in negotiations with creditors include:

- A postponement of debt payments until the farmer's net income improves. It could involve paying interest only or nothing at all for a period of time;
- An extension of the term of the loan,
- A write down of the debt. In order for creditors to agree, they would have to end up better off than if bankruptcy was declared or foreclosure took place.
- A quit claim whereby land is transferred to a creditor in exchange for settlement of a debt. A leaseback of the land for a specific time period might be negotiated.
- A set aside of debt whereby loan payments on a portion of debt are not required for a specified time period.

6.3.3. Refinancing Loans

Refinancing works well where a number of short term loans are consolidated into a long term loan. It is of no benefit if all the loans are currently long term. Many lending institutions grant a refinancing loan if it means the farming operation will be strengthened. In considering whether or not this type of loan is a solution to your particular problem, the lending institutions will consider the following aspects:
- The level of farm management ability;
- The level of financial management ability;
- What specific debts are to be consolidated;
- Can the security position be improved;
- The length of time necessary for orderly repayment;
- Will future spending or expansion be controlled;
- The applicant's age.

Refinancing may also mean contacting all your creditors and asking them to renegotiate your loan to allow for a longer repayment term. Realism is important. Creditors will not renegotiate a loan if you cannot expect to meet your payments. They need evidence that a consolidation loan will make your operation more viable.

6.3.4. Government Guarantees or Special Loans

Consideration may be given to arranging for government guarantees if there is some potential for the farm to succeed but lenders require more security than the farm has available. Special government loan programs that result in lower interest rates should be used. The Counselling and Assistance For Farmers Program is also available.

6.3.5. Off Farm Income

Off farm income may be an alternative to increase cash inflow. One or more of the family members may be able to obtain employment. Consideration must be given to the effect of off-farm employment on the time available for farming and timeliness of operations.

6.3.6. Scale Down of the Farm Operation

Part of the farm assets may be sold in order to pay down debts. Attempt to sell the least productive assets first. However, consideration must be given to the demand and market conditions for the assets you plan to sell. Personal assets, excess machinery, breeding stock or land might be considered for sale.

6.3.7. Equity Financing

While not a common arrangement, an outside investor may consider putting equity into the farm. The sale of farm land to an investor and leasing it back on a long term basis is one possibility.

6.3.8. Total Farm Sale

The last alternative is to sell the entire farm unit. An orderly sale of assets will generate greater proceeds than if the sale occurs under duress.

7. Useful Addresses

Saskatchewan Agriculture
Economics Branch
Farm Management Section
Room 329, 3085 Albert Street
Regina, Saskatchewan
S4S 0B1
787-5957

(Information and bulletins on credit, accounting, financial planning business analysis, income tax and estate planning.)

Saskatchewan Agriculture
(Farm Management Advice)
(Contact local Agricultural Representative Offices)

Farm Credit Corporation
500 - 2045 Broad Street
Regina, Saskatchewan
S4P 2B7
780-5610

Bank of Canada
2220 - 12th Avenue
Regina, Saskatchewan
S4P 0M8
352-2654

Personal Property Registry
10th Floor, 1874 Scarth Street
Regina, Saskatchewan
S4P 2C5
787-5512

Land Titles Offices
(Located in Regina, Moose Jaw, Swift Current, Saskatoon, Humboldt, Yorkton, Prince Albert and Battleford).

Counselling and Assistance for Farmers Program
Room 223, 3085 Albert Street
Regina, Saskatchewan
S4S 0B1
1-800-667-9819

Farm Debt Review Board
203-3988 Albert Street
Regina, Saskatchewan
S4S 3R1
780-5544

Farm Land Security Board
207-3988 Albert St.
Regina, Saskatchewan
S4S 3R1
787-5147

Provincial Mediation Board
1871 Smith Street
Regina, Saskatchewan
S4P 2N5
787-5408

Bankruptcy Division
Consumer and Corporate Affairs
2212 Scarth Street
Regina, Saskatchewan
S4P 2J6
780-5391

Agricultural Credit Corporation of Saskatchewan
P.O. Box 820
Swift Current, Saskatchewan
773-0042

8. Glossary

acceleration	When a lender demands full payment of a loan before it is due, he or she is requiring acceleration of the loan. This is unlawful in most circumstances.
arrears	Debts not paid at the due date.
bankrupt	A bankrupt is a person who has declared bankruptcy or has been petitioned into bankruptcy.
bankruptcy	A legal condition where you can no longer pay your debts and so have turned over all your affairs to a trustee in bankruptcy.
caveat	An entry made on the Certificate of Title of Land to warn others of the caveat holder's interest in the land and to make any later registrations subject to the priority of the caveat holder's interest if otherwise valid.
chartered banks	Banks governed by a federal statute, the Bank Act.
condition	An important term of a contract, which, if breached, allows the party who did not breach the condition, to cancel the contract.
consumer goods	Goods, other than real property, that are bought for use by the person buying them. They are not bought for investment or business purposes.
contract	A binding agreement between two or more persons where each person agrees to do something. For example, in a contract for the sale of a car, the dealer agrees to provide the car and the buyer agrees to pay for it.
creditor	Someone who lends money to another with the expectation that that person will repay the debt.
debenture	A document creating a long term loan available to incorporated business, including a farming operation. It covers all business assets and allows for the appointment of a receiver upon default.
debt consolidation	The process of borrowing a large sum of money for a long term in order to pay off many short and intermediate term debts so only one payment needs to be made.
debtor	A person who owes money to another, a creditor.
default	failure to pay a sum that is due according to a contract or the failure to do anything else required to be done by a contract.
discharge	The release from an obligation. For example, a bankrupt is discharged from his or her debts after the assets have been sold and the creditors satisfied.
easement	The right of one land owner to utilize the land of another in a particular manner. For example, Saskatchewan Power Corporation may have an easement so they can come on to your land to repair the hydro lines.
encumbrance	A charge or liability against property, eg, a mortgage or lien.
exempt property	Those assets that are excluded from seizure, if unsecured, according to the Exemptions Act.
fixed credit	A loan made for a certain amount of money for a certain period of time.
fixtures	An object that is so attached to land or to a building on the land as to be considered part of the land.

foreclosure	Taking title to land by the lender when the borrower defaults on land mortgage payments.
forfeiture	The loss of the right to property when it is seized due to your default in payment of a debt.
insolvency	A financial condition where the debtor can no longer pay his or her debts.
Land Titles Office	The Provincial Government offices where titles or interest in land are registered and can be searched. The offices are located in Regina, Moose Jaw, Swift Current, Saskatoon, Humboldt, Yorkton, Prince Albert and Battleford.
lien	In its widest sense, a charge for payment of a debt or duty upon any kind of property. Liens may be either general or particular. A particular lien is the right to retain the thing for some charge of claim connected with the thing, such as a mechanic's right to retain a car he or she has repaired until the proper charges have been paid. A general lien is the right to retain the thing not only for such charges, but also for a general balance of accounts between the parties with respect to other similar dealings.
line of credit	A short term loan that is used for day-to-day expenses. The balance of the loan is allowed to fluctuate and the funds are automatically advanced as required, up to a certain amount.
mortgage	A document giving the lender security over either real or personal assets of the borrower so that in the event of default in payment of the money lent to the borrower, the seller can sell the property to pay for the debt.
mortgagee	The lender of the mortgage debt.
mortgagor	The one who borrows the money.
operating loan	Loan obtained from banks or credit unions for day-to-day expenses. The normal term of the loan is one year. The amount is advanced either at one time or periodically.
property	Any possession or asset that a person may own. Real property is land, buildings, easements, right of ways, etc. Personal property is any kind of property other than real and includes corporate assets, business equipment, inventory, etc. as well as items such as furniture, cars etc.
proposal	An arrangement for paying back debts that an insolvent debtor can make to his or her creditors. If the creditors accept it and the court approves it, it becomes binding on all unsecured creditors.
realize	To obtain money in return for property; to convert property into cash.
receiver	One appointed by a lender to take control of business when the debtor has been unable to keep up payments on a loan secured by the General Security Agreement or a Debenture.
repossession	The taking back of an item by the seller when the buyer on credit has failed to keep up with payments.
secured creditor	A lender who holds as security for the debt a mortgage, charge or lien on or against the property of the debtor.
security interest	A claim in property which may allow the holder to repossess the property from whomever has it if the borrower defaults in repaying the loan.
seizure	The Act of taking goods from the borrower in default at the order of the lender. A sheriff is often hired to seize the goods.

short term loan	Debts due in the next twelve months. This includes operating loans, lines of credit and trade credit.
title	The right to ownership of property. A clear title means no encumbrances have been placed against the title to the property.
unsecured creditor	A creditor who holds no security for a debt. In the event of bankruptcy, the unsecured creditor is paid last from the proceeds of the sale of assets and often does not recover the full debt.
unsecured property	Assets that are not security for a mortgage, general security agreement, Section 178 agreement, etc. The owner owns these assets free from any claims against them, unless an unsecured creditor secures a judgement and seeks to seize the property to satisfy the judgement.
variable credit	Upon signing a master agreement, the creditor agrees to make certain credit available to you to be used from time to time at your option. Some examples are credit cards and lines of credit.
warranty	A guarantee given to a buyer as to the goods being bought. The breach of such a guarantee entitles the buyer to damages.
waste	Whatever actions that do lasting damage to land or buildings or anything which alters the nature of the property; examples would be cutting down trees, tearing down a building or taking top soil.